

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSE ALBERTO CAMPOS RODRIGUEZ,

Petitioner,

vs.

DWAYNE DEAL, *et al.*,

Respondents.

No. 3:14-cv-00431-RCJ-VPC

ORDER

This habeas action brought by a Nevada state inmate comes before the Court for initial review of the papers presented.

The papers presented are subject to multiple substantial defects.

First, petitioner did not properly commence the action by either paying the filing fee or submitting a properly-completed pauper application with all required attachments.

Second, petitioner did not use the required petition form. Under LSR 3-1 of the local rules, petitioner must file a habeas petition on the Court's required § 2254 petition form. Petitioner instead used a § 2241 petition form. While petitioner is challenging a prison classification decision, the determination of whether a petitioner must proceed under 28 U.S.C. § 2254 is a status inquiry directed to the source of the petitioner's custody rather than the target of his challenge. *See, e.g., Shelby v. Bartlett*, 391 F.3d 1061, 1063-64 (9th Cir. 2004). Petitioner is in custody pursuant to a Nevada state conviction. He therefore must proceed under § 2254, and he accordingly must use the Court's required § 2254 form as required by LSR 3-1.

1 Due to these multiple defects, the Court will dismiss this improperly-commenced action
 2 without prejudice. The dismissal of this action without prejudice will not necessarily result, in
 3 and of itself, in the one-year federal limitation period expiring or materially impact other issues
 4 in timely-filed new action. Petitioner is challenging a July 23, 2014, administrative prison
 5 classification decision. He asserts that he has not pursued state judicial review. Substantial
 6 time therefore remains in the federal limitation period at this juncture, and litigation of the
 7 issue of lack of exhaustion will not be materially impacted by a dismissal of the present action
 8 without prejudice.¹

9 IT THEREFORE IS ORDERED that this improperly-commenced action is DISMISSED
 10 without prejudice.

11 IT FURTHER IS ORDERED that any pending motions herein are DENIED as moot.

12 IT FURTHER IS ORDERED that, to the extent required in this procedural context, a
 13 certificate of appealability is DENIED. For the reasons discussed herein, jurists of reason
 14 would not find the district court's dismissal of this improperly commenced action without
 15 prejudice to be debatable or incorrect. As discussed herein, no adverse limitation
 16 consequences or other substantial procedural prejudice will result from the dismissal.

18 ¹Petitioner maintains that he "could not filed [sic] a petition for writ of habeas corpus in any court,
 19 state or federal because the law library did not had [sic] the form." #1-1, at 3. Petitioner obviously has not
 20 been prevented from filing a habeas petition in federal court, and he asserts that he used the § 2241 form to
 21 file in this Court. It is extremely doubtful that the law library is not providing habeas or other forms in a
 22 manner that bars petitioner's access to "any court, state or federal." Petitioner perhaps may be making
 23 requests that are too specific ("a habeas form for challenging a classification decision") or he simply is not
 24 being clear in what he is seeking. In all events, the dismissal of this action without prejudice will not materially
 25 impact adjudication of an exhaustion issue in a later action. Petitioner requests that the Court "remit" the
 26 action to the "lower courts." The state courts are not lower courts to a federal district court, and the Court
 27 does not remand federal habeas actions to the state courts. Any state court proceedings pursued by
 28 petitioner would have to be filed in state court by petitioner himself.

25 Nothing herein constitutes a definitive finding by the Court with regard to the specific calculation of
 26 the federal limitation period. Petitioner at all times remains responsible for calculating the running of the
 27 limitation period and timely presenting properly exhausted claims. Moreover, nothing in this order directs or
 28 extends permission for petitioner to file any particular proceeding in either state or federal court. The Court
 simply is dismissing an improperly commenced federal action without prejudice.

Nothing herein suggests that petitioner presents potentially viable claims that are cognizable in a
 habeas action.

1 The Clerk of Court shall SEND petitioner two copies each of a § 2254 habeas petition
2 form and a pauper application form, along with one copy each of the instructions for the forms
3 and of the papers presented in this action.

4 The Clerk shall enter final judgment accordingly, dismissing this action without
5 prejudice.

6 DATED: September 9, 2014.

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11 ROBERT C. JONES
12 United States District Judge
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